

Department of Energy

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Generally Accepted Accounting Principles and these costs may be considered by DOE in determining the Borrower's contribution to total project costs.

§ 611.103 Application evaluation.

(a) *Eligibility screening.* Applications will be reviewed to determine whether the applicant is eligible, the information required under § 611.101 is complete, and the proposed loan complies with applicable statutes and regulations. DOE can at any time reject an application, in whole or in part, that does not meet these requirements.

(b) *Evaluation criteria.* Applications that are determined to be eligible pursuant to paragraph (a) of this section shall be subject to a substantive review by DOE based upon factors that include, but are not limited to, the following:

(1) The technical merit of the proposed advanced technology vehicles or qualifying components, with greater weight given for factors including, but not limited to:

(i) Improved vehicle fuel economy above that required for an advanced technology vehicle;

(ii) Potential contributions to improved fuel economy of the U.S. light-duty vehicle fleet;

(iii) Likely reductions in petroleum use by the U.S. light-duty fleet; and

(iv) Promotion of use of advanced fuel (e.g., E85, ultra-low sulfur diesel).

(2) Technical Program Factors such as economic development and diversity in technology, company, risk, and geographic location.

(3) The adequacy of the proposed provisions to protect the Government, including sufficiency of Security, the priority of the lien position in the Security, and the percentage of the project to be financed with the loan.

(4) In making loans to those manufacturers that have existing facilities, priority will be given to those facilities that are oldest or have been in existence for at least 20 years even if such facilities are idle at the time of application.

§ 611.104 [Reserved]

§ 611.105 Agreement.

(a) Only an Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate the government to make a loan made by and through the Federal Financing Bank with the full faith and credit of the United States government on the principal and interest.

(b) DOE is not bound by oral representations made during the Application stage, or during any negotiation process.

(c) No funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay administrative fees, or other fees charged by or paid to DOE relating to the section 136 loan program.

(d) Prior to the execution by DOE of an Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Agreement, are satisfied:

(1) The Borrower is a Eligible Applicant as defined in this Part;

(2) The Agreement is for an Eligible Project as defined in this Part;

(3) The principal amount of the loan is limited to no more than 80 percent of reasonably anticipated total Project Costs;

(4) Loan funds will be disbursed only to meet immediate cash disbursement needs of the Borrower and not for investment purposes, and any investment earnings obtained in excess of accrued interest expense will be returned to United States Government; and

(5) Such documents, representations, warrants and covenants as DOE may require.

§ 611.106 Environmental requirements.

(a)(1) *In general.* Environmental review of the proposed projects under this part will be conducted in accordance with applicable statutes, regulations, and Executive Orders.

(2) The applicant must submit a comprehensive environmental report. The comprehensive environmental report shall consist of the specific reports and related material set forth in paragraphs (d) through (f) of this section.

(3) The regulations of the Council on Environmental Quality implementing NEPA require DOE to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public. See 40 CFR 1506.6(b). The comprehensive environmental report will provide substantial basis for any required environmental impact statement or environmental assessment and findings of no significant impact, pursuant to the procedures set forth in 10 CFR 1021.215. DOE may also make a determination as to whether a categorical exclusion is available with regard to an Application.

(b) The detail of each specific report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each specific report shall be addressed or its omission justified, unless the specific report description indicates that the data is not required for that type of project. If material required for one specific report is provided in another specific report or in another exhibit, it may be incorporated by reference. If any specific report topic is required for a particular project but is not provided at the time the application is filed, the comprehensive environmental report shall explain why it is missing and when the applicant anticipates it will be filed.

(c) As appropriate, each specific report shall:

- (1) Address conditions or resources that might be directly or indirectly affected by the project;
- (2) Identify significant environmental effects expected to occur as a result of the project;
- (3) Identify the effects of construction, operation (including maintenance and malfunctions), and termination of the project, as well as cumulative effects resulting from existing or reasonably foreseeable projects;
- (4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project; and
- (5) Provide a list of publications, reports, and other literature or commu-

nications that were cited or relied upon to prepare each report.

(d) Specific Report 1—Project impact and description. This report must describe the environmental impacts of the project, facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained.

(e) Specific Report 2—Socioeconomics. This report must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. The report must:

- (1) Describe the socioeconomic impact area;
- (2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure;
- (3) Describe on-site manpower requirements and payroll during construction and operation, including the number of construction personnel who currently reside within the impact area, would commute daily to the site from outside the impact area, or would relocate temporarily within the impact area;
- (4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population;
- (5) Describe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments; and
- (6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that would result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(f) Specific Report 3—Alternatives. This report must describe alternatives to the project and compare the environmental impacts of such alternatives

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to those of the proposal. The discussion must demonstrate how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. The potential for each alternative to meet project deadlines and the environmental consequences of each alternative shall be discussed. The report must discuss the “no action” alternative and the potential for accomplishing the proposed objectives through the use of other means. The report must provide an analysis of the relative environmental benefits and costs for each alternative.

§611.107 Loan terms.

(a) All loans provided under this part shall be due and payable in full at the earlier of:

(1) the projected life, in years, of the Eligible facility that is built or installed as a result of the Eligible Project carried out using funds from the loan, as determined by the Secretary; or

(2) Twenty-five (25) years after the date the loan is closed.

(b) Loans provided under the Part must bear a rate of interest that is equal to the rate determined by the Secretary of the Treasury, taking into consideration current market yields outstanding marketable obligations of the United States of comparable maturity. This rate will be determined separately for each drawdown of the loan.

(c) A loan provided under this part may be subject to a deferral in repayment of principal for not more than 5 years after the date on which the Eligible facility that is built or installed as a result of the Eligible Project first begins operations, as determined by the Secretary.

(d)(1) The performance of all of the Borrower's obligations under the Loan Documents shall be secured by, and shall have the priority in, such Security as provided for within the terms and conditions of the Loan Documents.

(2) Accordingly, the rule states that the Secretary must have a first lien or security interest in all property acquired with loan funds. This requirement may be waived only by the Secretary on a non-delegable basis. DOE must also have a lien on any other

property of the applicant pledged to secure the loan.

(3) In the event of default, if recoveries from the property and revenues pledged to the repayment of the loan are insufficient to fully repay all principal and interest on the loan, then the Federal Government will have recourse to the assets and revenues of the Borrower to the same extent as senior unsecured general obligations of the Borrower.

(e) The Borrower will be required to pay at the time of the closing of the loan a fee equal to 10 basis points of the principal amount of the loan.

§611.108 Perfection of liens and preservation of collateral.

(a) The Agreement and other documents related thereto shall provide that:

(1) DOE and the Applicant, in conjunction with the Federal Financing Bank if necessary, will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the loan; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. DOE shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by DOE.

(b) In the event of a default, DOE may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

§611.109 Audit and access to records.

(a) The Agreement and related documents shall provide that:

(1) DOE in conjunction with the Federal Financing Bank, as applicable, and the Borrower, shall keep such records concerning the project as are necessary, including the Application, Term Sheet, Conditional Commitment,